IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.895 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

RANJITSINH FATEHSINH RAJ - Appellant

Versus

STATE OF GUJARAT - Respondent

==========

Appearance :
MR NK MAJMUDAR for Appellant.
MR KT DAVE, APP for Respondent.
==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 08/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated September 12, 2002 rendered by the learned

Additional Sessions Judge, Bharuch, Camp at Rajpipla, in Special Atrocity Case No.103 of 2000 by which the appellant is acquitted of offences punishable under Sections 3(1)(xi), 3 (1) (xii) and Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("the Act" for short), but convicted for commission of offences punishable under Sections 354 & 376(2) of the Indian Penal Code ("IPC" for short) and sentenced to suffer R.I. for ten years and fine of Rs.1,000=00, in default S.I. for two months, for commission of offence punishable under Section 376(2) of the IPC. It may be stated that no separate sentence is imposed on the appellant for commission of offence punishable under Section 354 IPC.

2. In view of the law laid down in **Bhupinder Sharma vs. State of Himachal Pradesh, (2003) 8 SCC 551,** the name of the victim is not indicated in this judgment.

3. The facts emerging from the record of the case are as under:

Ramanbhai Laxmanbhai Tadvi residing at Kevadia Colony was serving in the Office of Executive Engineer,

Sardar Sarovar Narmada Nigam, Bharuch. During the subsistence of his marriage with his wife, his wife gave birth to three children, i.e. two sons and one daughter. The name of the eldest son is Raju and younger to him is Hemant whereas the victim was the youngest child of Ramanbhai. Birth Certificate of the victim produced on record of the case indicates that the date of birth of the victim is December 17, 1984. The victim was prosecuting her studies in Government Higher Secondary School, Kevadia Colony. When she was prosecuting her studies in 8th, 9th & 10th Standards, the appellant used to impart private tuition to her over and above coaching her in the school. After the victim cleared 10th Standard examination, she was promoted to 11th Standard and was prosecuting studies in the said standard. One of the subjects in which the victim was to take examination was “Sanskrit”. As the victim had no book of “Sanskrit”, she had requested the appellant to supply one book of Sanskrit to her. The incident in question took place on July 13, 2000. On the day of incident, the victim put on the school uniform and went to school at about 12.30 noon. The first period of the class was conducted by one Mr.Hareshbhai whereas second period was to be conducted by Ms.Rohiniben, but she had not turned up in the school,

and, therefore, the victim was sitting in the class room. At that time, the appellant came near the door of the class and beckoned the victim to come out of the class showing the book of Sanskrit language to her. As the victim was knowing the appellant very well, she came out of the class and followed the appellant. The appellant took the victim to Room No.19, which is situated on the first floor of the building of the school. After the victim entered Room No.19, the appellant closed the doors from inside and embraced the victim with his both the hands. Thereupon, the victim protested and asked the appellant to release her from his embrace. However, the appellant told the victim that she was belonging to a lower caste (Bhildi, which is one of the Scheduled Tribes in Gujarat) and he was determined to ravish her. So saying, the victim was made to lie down on the ground. The appellant threatened the victim that if anyone was informed about his act, he would fail her and kill her father. After administering threats, the appellant untied string of trousers put on by the victim and also removed her nicker. Thereafter, the appellant removed his clothes and subjected the victim to rape against her wish. After commission of rape was over, the appellant put on his clothes. When the appellant was trying to come

out of the room and the victim was tying string of her trousers, all of a sudden, Mr.Rajnikant Ravjibhai Patel, who was Principal of the School, arrived in the room accompanied by one Mr.Ashokbhai Lallubhai Tadvi and Mr.Ranjeetbhai Balubhai. The Principal of the school started interrogating the appellant and during that time, the victim left the place without being noticed. The victim went to her house, but did not narrate the incident to her parents as she was threatened that disclosure of the incident would result into her failure in 11th standard and killing of her father. As the Principal had seen the appellant with a girl, who was found tying her trousers in Room No.19 of the school, the Principal addressed a letter dated July 18, 2000 to the appellant and called upon him to offer explanation within one day as to how he was found talking with the girl in Room No.19, which was totally vacant. Though the memo issued to the appellant was received by him, he did not offer any explanation. Therefore, reminder dated July 21, 2000 was served upon the appellant calling upon him to give his explanation as demanded in letter dated July 18, 2000 within one day from the date of receipt of the reminder. The reminder was also duly received, but no explanation worth the name was offered by him. Therefore,

another reminder dated July 22, 2000 was addressed by the Principal to the appellant calling upon him to give explanation within a day. The record does not show that any explanation was offered by the appellant pursuant to abovereferredto communications. As the Principal of the school was trying to know as to why the appellant was found all alone in the company of a girl, who was attempting to tie her trousers, the appellant threatened the Principal with dire consequences as a result of which, the Principal lodged complaint against the appellant on July 22, 2000. The complaint lodged by the Principal of the school was registered by Mr.R.B.Baria, who was Police Sub Inspector of Kevadia Police Station. During the course of investigation of the said complaint, it transpired that the girl with whom the appellant was found in Room No.19 by the Principal was the victim. The Investigating Officer, therefore, went to the house of the victim and recorded her statement. In her statement, the victim claimed that she was not knowing the girl, who was found talking with the appellant and that she had not met the appellant on July 13, 2000 in one of the classrooms of the school. The victim claimed that the story that the appellant was found with her in one of the rooms of the school was false, and mentioned that the

appellant, who had imparted knowledge and guidance to her, was an ideal man and her relations with the appellant were that of pupil and teacher. She also mentioned that neither she was molested nor subjected to rape by the appellant on July 13, 2000. It may be mentioned that interrogation of the victim took place in presence of her parents and, therefore, the parents of the victim suspected that something wrong had happened to their daughter. Therefore, they took the victim into confidence and assured her of confidentiality. Thereupon, the victim mentioned before her parents that on the pretext of giving Sanskrit book, the appellant had lured her to a lonely room where she was subjected to rape against her wish. The parents of the victim, therefore, took the victim to Kevadia Police Station. At the Police Station, the victim lodged her complaint against the appellant indicating as to how she was subjected to rape by the appellant. On the basis of the complaint lodged by the victim, offences were registered against the appellant by Mr.R.B.Baria, who was then Police Sub Inspector of Kevadia Police Station. The victim was referred to hospital for medical examination where she was examined by Dr.Radhikaben Narayanrao. The Investigating Officer visited the place of incident and

he found stains of semen on one of the tiles of the room. In order to carry out scientific investigation, services of an expert of Forensic Science Laboratory, i.e. Mr.Sidhdharth Indravadan Desai, were requisitioned. Mr.Desai visited the place of incident and found stains of semen on the tile concerned. The tile was removed for analysis and a detailed panchnama was drawn in presence of panch-witnesses. The clothes put on by the victim on the date of incident were seized under a panchnama and it was found that trousers put on by her were found to be stained with semen. During the course of investigation of the complaint of the victim, the appellant was arrested. Samples of his saliva, semen, etc. were obtained. Necessary investigation into the case was made by Dy.S.P. Mr. Punambhai Chhanabhai Baranda. Incriminating articles seized during the course of investigation were sent to F.S.L. for analysis. The report of the analysis indicated that same group of semen as that of the appellant was found on trousers put on by the victim on the date of incident. On completion of investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate First Class, Rajpipla, for commission of offences punishable under Sections 376(2), 354 and 506(2) of the IPC as well as Sections 3(1)(xi) & (xii) and

Section 3(2)(v) of the Act. As the offences punishable under the provisions of Act and Section 376 IPC are exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Bharuch, for trial where it was numbered as Special Atrocity Case No.103 of 2000.

4. The learned Additional Sessions Judge, Bharuch, camp at Rajpipla, to whom the case was made over for trial, framed necessary charge against the appellant at Exh.15. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined: (1) victim as P.W.-1 at Exh.18; (2) Incharge Principal of Government Higher Secondary School, Kevadia Colony, Mr.Rajnikant Ravjibhai Patel as P.W.-2 at Exh.20; (3) Rajeshkumar Somabhai as P.W.-3 at Exh.31; (4) Bhagwandas Mohanbhai as P.W.-4 at Exh.32; (5) Hemantkumar Ramanbhai as P.W.-5 at Exh.33; (6) Rajendrakumar Ramanlal as P.W.-6 at Exh.34; (7) father of the victim, i.e. Ramanbhai Laxmanbhai as P.W.-7 at Exh.36; (8) Ranjeetbhai Babubhai as P.W.-8 at Exh.37; (9) Ashokbhai Lallubhai as P.W.-9 at Exh.38; (10) Kantibhai Guljibhai as P.W.-10 at Exh.41; (11) panch Ramubhai Kantibhai as P.W.-11 at Exh.45; (12) panch Bhagwanbhai Chhitubhai as P.W.-12 at Exh.47; (13) panch

Shantilal Mavjibhai as P.W.-13 at Exh.52; (14) panch Pyarubhai Gordhanbhai as P.W.-14 at Exh.53; (15) Dr.Radhikaben Narayanrao, who had examined the victim, as P.W.-15 at Exh.54; (16) Scientific Assistant Mr. Dharmendra Nathubhai Patel as P.W.-16 at Exh.59; (17) Scientific Officer Smt.Shobhnaben J. Nanawala as P.W.-17 at Exh.61; (18) Scientific Officer Mr.Bhautik Nandshanker Pathak as P.W.-18 at Exh.67; (19) Scientific Officer Mr.Deepakkumar Bhagubhai Patel as P.W.-19 at Exh.71; (20) Expert from FSL Mr.Sidhdharth Indravadan Desai as P.W.-20 at Exh.73; (21) PSI Mr.Rumalsinh Baljibhai Baria as P.W.-21 at Exh.81; (22) Dy.S.P. Mr.Punambhai Chhanabhai Baranda as P.W.-22 at Exh.86; and, (23) Dy.S.P. Mr.Harish Ranchhodlal Muliyana as P.W.-23 at Exh.98, to prove its case against the appellant. The prosecution also produced documentary evidence such as; complaint of victim at Exh.19; document indicating names and addresses of staff of the school at Exh.21; extract of necessary Register of Government School as to who were on duty between 12.30 noon and 5.30 P.M. on July 13, 2000 at Exh.22; relevant extract from the register indicating as to who were on duty on July 13, 2000 between 7.15 A.M. and 12.15 noon at Exh.23; list containing names of Class IV employees, i.e. peons,

employed in Government Higher Secondary School, Kevadia Colony, at Exh.24; extract from monthly presence Register maintained by the school at Exh.25; letter dated July 18, 2000 addressed by the Principal to the appellant calling upon him to offer explanation as to under which circumstances he was found all alone in a room with a girl at Exh.26; reminder dated July 21, 2000 sent to the appellant as the appellant had failed to offer his explanation at Exh.27; another reminder dated July 22, 2000 issued to the appellant calling upon to offer his explanation as demanded by letter dated July 18, 2000 at Exh.28; application dated July 22, 2000 submitted by Principal Mr.Rajnikant Patel to PSI of Kevadia Police Station stating, *inter alia,* that he was being threatened on telephone by the appellant at Exh.29; complaint of Principal Mr.Ranjikant Patel against the appellant for commission of offence punishable under Section 506(2) IPC at Exh.30; panchnama of place of incident at Exh.42; panchnama of person of prosecutrix at Exh.44; arrest panchnama of the appellant at Exh.51; certificate issued by Dr. Radhikaben Narayanrao after examining the victim at Exh.56; report of the analysis made by Scientific Officer Smt.Shobhnaben at Exh.62; report of serologist at Exh.64; report containing analysis of semen by Scientific

Officer Mr.Bhautik Pathak at Exh.68; reports of Serologist at Exhs.69 and 70, statement of the victim, which was recorded by PSI Mr.Baria pursuant to complaint lodged by Principal Mr.Rajnikant Patel against the appellant for commission of offence punishable under Section 506(2) IPC at Exh.83; panchnama of Room No.19 in which the appellant was seen with a girl student at Exh.84; birth certificate of the prosecutrix indicating that her birth date is December 17, 1984 at Exh.96; etc. in support of its case against the appellant.

5. After recording of evidence of the prosecution witnesses was over, the learned Judge of the trial Court explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the appellant claimed that illegalities were being committed by Mr.Rajnikant Patel, who Incharge Principal of the Government Higher Secondary School, Kevadia Colony, and as he had opposed the same, a false case of rape was foisted upon him at the instance of Rajnikant Patel, but he was innocent. However, the appellant did not adduce any evidence in his defence.

6. On appreciation of evidence led by the prosecution, the learned Judge held that though it was alleged by the prosecution that the appellant had committed offences punishable under Sections 3(1)(xi), 3(1)(xii) and Section 3(2)(v) of the Act, the investigation into those allegations was not made by the DSP as required by the provisions of the said Act and, therefore, the appellant was entitled to be acquitted from the charge of commission of those offences. The learned Judge considered examination-in-chief of the victim as well as her cross-examination and came to the conclusion that her testimony was quite clear, categorical as well as implicitly reliable which, in turn, established commission of offences punishable under Sections 376 (2) and 354 IPC by the appellant. On consideration of evidence tendered by Principal of the School Mr.Rajnikant Patel, the learned Judge held that it was proved that the appellant was found in the company of the victim in Room No.19 of the school and the testimony of the victim was corroborated by the evidence of the Principal. According to the learned Judge, the find of same group of semen as that of the appellant on trousers worn by the prosecutrix also lent corroboration

to her claim that she was subjected to forcible rape by the appellant. The learned Judge rejected the contention raised on behalf of the defence that the investigation was not impartial and held that no special interest in the investigation was taken by Dy.S.P. Mr.Baranda, who had looked into the complaint of the prosecutrix at the behest of PSI Mr.Baria. The learned Judge noticed that the defence which was set out in further statement by the appellant could not be probabilized. The learned Judge noticed that it could not be proved by the prosecution satisfactorily that the appellant had committed offence punishable under Section 506(2) IPC. In view of abovereferredto conclusions, the learned Judge has convicted the appellant under Sections 376(2) and 354 IPC and imposed sentences referred to hereinabove by judgment dated September 12, 2002 giving rise to instant appeal.

7. Mr.Nirav K.Majmudar, learned counsel of the appellant, contended that when the trial Court has disbelieved the case of the prosecution that the appellant had threatened the victim before or after committing rape, her case that she was subjected to rape by the appellant also should have been disbelieved by the trial Court. According to the learned Counsel of the

appellant, the find of semen in large quantity on one of the tiles fitted in Room No.19 as well as trousers of the victim suggest that no rape whatsoever was committed on the victim by the appellant and, therefore, the impugned judgment should be set aside. The learned counsel of the appellant drew the attention of the Court to paragraphs 19, 20 and 21 of the testimony of the prosecutrix and contended that as the prosecutrix has stated that she had talk with the appellant, but has not stated the appellant had committed rape on her, the judgment impugned in the appeal should be reversed. The learned counsel of the appellant emphasized that no external injuries were sustained by the prosecutrix nor injuries were sustained by the appellant during the course of alleged rape by the appellant on the victim and, therefore, the story of rape narrated by the victim should have been disbelieved. The learned counsel argued that the trousers worn by the victim were handed over by her to washer-man for washing and, therefore, the find of semen on her trousers becomes doubtful. What was maintained before the Court was that the statement, which was given by the prosecutrix during the course of investigation of complaint lodged by the Principal of the school against the appellant completely exonerates the appellant and relying upon the same, the

appellant should have been acquitted. According to the learned counsel of the appellant, version of the incident as given by the prosecutrix is not reliable at all and, therefore, the same should not have been acted upon more particularly when there was a considerable delay of about 13 days in lodging the complaint by the prosecutrix against the appellant, which is not satisfactorily explained at all. According to the learned counsel, a false case of rape was foisted upon the appellant at the instance of Incharge Principal Mr.Rajnikant Patel and/or to obtain compensation of rupees one lakh from the Government and, therefore, the conviction of the appellant under Section 376 IPC should be set aside. In the alternative, it was argued that at the best what was established by the prosecution was that an attempt to commit rape on the victim was made by the appellant and, therefore, the conviction of the appellant should be altered to one punishable under Section 376 read with Section 511 IPC and half the sentence prescribed for commission of offence punishable under Section 376(2) IPC should be imposed on the appellant for commission of the said offence. The learned counsel of the appellant asserted that the learned Judge of the trial Court has failed to appreciate the evidence on record in its true

perspective and, therefore, the appeal should be allowed. In support of his submissions, the learned counsel of the appellant relied upon decisions in (1) **State of Maharashtra vs. Rajendra Jawanmal Gandhi & Ors., A.I.R. 1997 SC 3986**, and (2) **Madan Lal vs. State of Jammu & Kashmir, A.I.R. 1998 SC 386.**

8. Mr.K.T.Dave, learned Additional Public Prosecutor for the State, contended that the testimony of the prosecutrix is free from any blemish and as her testimony is quite clear, categorical and implicitly reliable, the learned Judge of the trial Court, who had advantage of observing demeanour of the witnesses, did not commit any error in placing reliance on her testimony for convicting the appellant under Sections 376(2) and 354 IPC. The learned counsel of the State Government brought to the notice of this Court the principles of appreciation of evidence of a prosecutrix laid down by the Supreme Court in catena of reported decisions and contended that absence of injuries on the prosecutrix or absence of dead or mobile spermatozoa either in vagina or in the cervix should not be considered by the Court as fatal to the prosecution. The learned counsel of the State Government asserted that it is true that during the

course of investigation of the complaint lodged by Principal Mr.Rajnikant, statement of the prosecutrix was recorded which completely exonerated the appellant, but thereafter the victim was taken into confidence by her parents to whom she had narrated the whole incident of rape on her by the appellant after which, the complaint was lodged and as the statement exonerating the appellant was made by the victim while under fear of threats, the trial Court has rightly disbelieved the same. It was argued that delay in lodging the complaint is satisfactorily explained and the same should not be treated as having any vitiating effect on the prosecution case. The learned counsel also emphasized that since lodging of complaint of rape brings in question of morality, and chastity of victim, initial hesitation and delay is understandable as a result of which so-called delay should not be regarded as affecting version of the prosecutrix that she was subjected to rape by the appellant. What was emphasized was that the evidence of rape victim, which stands at a higher pedestal than that of an injured should be acted upon without corroboration and as the evidence of the victim is without any blemish, the same should be acted upon by this Court while determining the guilt of the appellant. In the

alternative, it was argued that find of semen stains on the trousers of the victim should be treated as corroborative piece of evidence to fasten the liability on the appellant under Sections 376(2) IPC. After referring to the evidence of Principal Mr.Rajnikant Patel, it was argued on behalf of the State that the claim of the victim that she was lured by the appellant to a secluded room, gets corroboration from his evidence and, therefore, the judgment impugned in the appeal should be confirmed. The learned counsel of the State Government asserted that cogent and convincing reasons have been assigned by the learned Judge of the trial Court for convicting the appellant under Sections 376(2) and 354 IPC and as the learned counsel of the appellant has failed to dislodge those weighty reasons, the appeal, which lacks merits, should be dismissed.

9. This Court has heard Mr.Nirav K.Majmudar, learned counsel of the appellant, and Mr.K.T.Dave, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable

probabilities of the case.

10. This Court is dealing with a rape case and, therefore, it would be relevant to notice, in brief, the law laid down by the Supreme Court regarding appreciation of evidence of a prosecutrix. In **State of Punjab Vs. Gurmit Singh, A.I.R. 1996 SC 1393**, following principles have been laid down for appreciation of evidence tendered by a prosecutrix:

> *"The Courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a Court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her*

statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable, Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a Victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity least that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

Having noticed the principles, which must be borne in mind by a Court of law while appreciating the evidence of a prosecutrix, this Court proposes to consider the evidence of prosecutrix tendered in the case on hand.

11. The prosecutrix in this case is examined as

P.W.-1 at Exh.18. In her examination-in-chief, she has stated that the incident had taken place on July 13, 2000 in Government Higher Secondary School, Kevadia Colony. According to her, at the time of incident, she was prosecuting studies in 11th standard and one Hareshbhai was the Principal of the school. The witness has stated that one of the subjects, which she had opted for studies in 11th Standard, was 'Sanskrit' and she had no book of Sanskrit. According to the prosecutrix, the appellant had given private tuition to her when she was prosecuting studies in 8th, 9th and 10th standard and as the appellant was known to her, she had requested the appellant to make the book of 'Sanskrit' available to her. The witness has mentioned that on July 13, 2000, when she was attending the class, the appellant had come near the door of the classroom and pointed out 'Sanskrit' book and, therefore, in order to get the book, she had left the class and followed the appellant. What is mentioned by the victim is that the appellant had taken her to Room No.19 of the school, which is situated on the first floor and as soon as she had entered the room, the appellant had closed the doors of the room. The witness has mentioned that thereafter, the appellant had embraced her and, therefore, she had protested, but she was told by the appellant that she was belonging to a Backward Class

(*Bhildi*) and that he was determined to deflower her. The witness has claimed that thereafter, she was thrown on the ground and threatened that if the incident was narrated to anyone then she would be failed in examination and that her father would be killed. According to the victim, thereafter, the appellant had untied string of her trousers and removed the nicker after which he had removed his clothes and subjected her to rape forcibly against her wish. The witness has mentioned that after committing rape on her, the appellant had put on his clothes whereas she was trying to tie the string of her trousers and at that time, the Principal of the School had arrived in the room and had started interrogating the appellant. The victim has claimed that when the appellant was being interrogated, she had left the room unnoticed and had not narrated the incident to anyone because of the threats administered to her by the appellant. According to the victim, the police had visited her house on July 24, 2000 and interrogated her after which, her statement was recorded. What is maintained by the victim is that from her interrogation by the Police, her parents had suspected that something wrong had happened to her and, therefore, she was taken into confidence by her parents. It is mentioned by the victim that thereupon she had narrated the incident of

rape by the appellant on her, to her parents. The witness has mentioned that thereafter, she had gone to the Police Station in the company of her parents and lodged the complaint against the appellant on July 26, 2000. During the course of recording of her evidence, she produced the complaint lodged by her at Exh.19. The witness has further stated that place of incident was shown by herself to the police. She also identified petticoat as well as black-coloured trousers put on by her at the time of incident. According to the victim, after lodging of the complaint, she was subjected to medical examination at Government Hospital, Kevadia. During the course of recording of her examination-in-chief, the victim identified the appellant as perpetrator of crime.

11.1 In her cross-examination, the witness has mentioned that she was being taught 'Sanskrit' in 7th & 8th standard by Mr.Pathak as well as by Ms.Menaben in 9th & 10th standard and Hareshbhai in 11th standard and that she had no grievance against any of abovenamed teachers. The suggestion made by the defence that the appellant had not taught her 'Sanskrit' language either in 8th standard or 9th standard or 10th standard or 11th standard, was accepted by her, but it was maintained by her that the

appellant had given private tuition to her when she was prosecuting studies in 8th, 9th & 10th standard. The suggestion made by the defence that there was no stopper on the door for closing Room No.19 from inside was emphatically denied by her. After stating that the appellant had not taught her 'Sanskrit', it was stated by her in her cross-examination that she was knowing the appellant since long and had, therefore, demanded the book of 'Sanskrit' from him. The witness has stated that after coming out of her class room, she had demanded the book of 'Sanskrit' from the appellant, but the appellant had not given the same to her and, therefore, she had followed the appellant to Room No.19. In Paragraph 19 of her testimony, it is mentioned by her that when the appellant was closing the room from inside, she had made attempt to prevent the appellant from closing the room, but in spite of her efforts, the appellant had closed the room from inside as a result of which, she had raised shouts for help. According to her, when the appellant was trying to untie string of her trousers after throwing her down on the ground, she had raised shouts. The cross-examiner wanted to know from the victim as to whether her both hands and legs were free and whether any attempt was made by her to push away the appellant and in answer to this question, it was stated by the victim that her

hands and legs were free and, therefore, she had attempted to push away the appellant, but failed. The victim has further stated that the appellant after making her naked, had taken out his clothes, but during that time, she had not made any attempt to flee because of the threats administered to her by the appellant. The victim has further mentioned that she was in the company of the appellant in Room No.19 for about 20 to 25 minutes after the appellant had removed her clothes. However, the suggestion made by the defence that during this time, she had peaceful talks with the appellant was emphatically denied by her. Similarly, the suggestion made by the defence that she had stayed with the appellant for about 45 minutes in Room No.19 was also emphatically denied by her. According to the victim, after leaving Room No.19, she had gone to her class and in recess, had gone to her home. In cross-examination also, the witness has maintained that she could not narrate the incident to her mother because of threats administered to her. The suggestion made by the defence that no forcible rape was committed by the appellant on her was emphatically denied by her. Similarly, the suggestion made by the defence that the appellant had not told her that she was belonging to a lower class of the society and he was determined to ravish her, was denied by her. The

suggestion made by the defence that she had lodged false complaint to obtain rupees one lakh from the Government as compensation was also denied by her. The suggestion that a false complaint was lodged by her against the appellant was also denied by her. Several other questions were also put to her, which were replied by her. However, they are not relevant for the purpose on hand and, therefore, not referred to in detail.

11.2 On re-appreciation of evidence produced on record of the case, this Court finds that the date of birth of the prosecutrix is December 17, 1984. This is evident from the contents of birth certificate of the prosecutrix produced by the prosecution at Exh.96. It means that on the date of incident, i.e. on July 13, 2000, she was aged about 15 years and 7 months. In Paragraph 28 of her testimony, the victim has stated that after the incident in question, her marriage took place with Premanandbhai Kanubhai Tadvi of Village Karoli. It means that after her marriage, the victim had come to the Court and narrated the incident of rape on her. Though the victim is subjected to gruelling cross-examination, nothing could be brought on record to impeach her credibility. No major contradictions and/or omissions could be brought on record by the defence so as

to doubt the claim advanced by the victim regarding rape on her by the appellant. The appellant could not probabilise his defence that a false case was lodged against him at the instance of leaders of Tadvi Community to enable the victim to obtain compensation of Rs.1 Lakh from the Government nor the defence that a false case was foisted upon the appellant at the instance of Principal Mr.Rajnikant could be probabilized. As explained by the Supreme Court, testimony of a victim of rape stands at a higher pedestal than that of an injured. It is relevant to notice that the victim had taken private tuition from the appellant when she was prosecuting studies in 8th, 9th and 10th standard and, thus, the appellant was quite well known to her. Therefore, her claim that she had demanded book of 'Sanskrit' from the appellant inspires the confidence of this Court. The victim has tendered her evidence before the Court and narrated the incident of rape on her by the appellant in a most natural manner without making any noticeable embellishments. Therefore, her testimony deserves acceptance without any kind of corroboration. It is well to remember that at the time of tendering the evidence before the Court she was already married. The prosecutrix, at the time of tendering evidence before the Court was adult and full of understanding. Narration of rape on her by a married

woman is bound to bring shame and discomfort to her. The prosecutrix, therefore, would not have narrated the incident of rape on her by the appellant falsely if the rape on her by the appellant had not been committed. Under the circumstances, this Court is of the firm opinion that the learned Judge of the trial Court, who had advantage of observing demeanour of the witnesses, was justified in acting upon the reliable testimony of the prosecutrix for coming to the conclusion that commission of offence punishable under Sections 376(2) and 354 IPC by the appellant was fully established. Even if one were to seek corroboration to the testimony of prosecutrix, the same is available in abundance as far as present case is concerned.

11.3 The claim of the victim that after showing the book of 'Sanskrit', the appellant had lured her to Room No.19 on the first floor of the school and committed rape on her, gets corroboration from the testimony of Principal Mr.Rajnikant Patel, which establishes that on July 13, 2000, he had gone to Room No.19 and found a girl tying the string of her trousers and that at that time, the appellant was present in the room. It is relevant to notice that as the appellant was found all alone in a secluded room with a girl, the Principal of the School

had sought his explanation by serving memorandum dated July 18, 2000, which is produced at Exh.26. The appellant had failed to offer any explanation and, therefore, another reminder dated July 21, 2000 was served on him asking him to offer explanation within one day. That reminder is produced on record of the case by the prosecution at Exh.27. As the appellant had failed to respond to demand made in Exhibits 26 ad 27, another reminder dated July 22, 2000 was served on him, which is produced by the prosecution at Exh.28. It is relevant to notice that the appellant did not offer any explanation nor stated circumstances in which he was found in a secluded room talking with a girl. The evidence of Principal Rajnikant recorded at Exh.20 would indicate that as he was making inquiries against the appellant and had called upon him to offer explanation as to in which circumstances he was found all alone in a secluded room with a girl, the appellant had threatened him with dire consequences as a result of which, he had to lodge complaint against the appellant. The Principal has produced the complaint lodged by him against the appellant at Exh.30. One who threatens his superior would never fail to threaten a girl to satisfy his carnal desire. Therefore, the claim advanced by the prosecutrix in her testimony that before committing the rape on her,

the appellant had threatened her to fail her in 11th Standard and kill her father, deserves acceptance. The victim, who was married at the time of tendering evidence, would not involve the appellant falsely in such a serious offence by staking her married life nor would allow the real culprit of crime to go scot-free and, therefore, her case that she was subjected to forcible rape by the appellant was rightly accepted by the learned Judge of the trial Court.

12. As noticed earlier, law does not require that a testimony of victim of sexual assault should be corroborated if it is found to be reliable. However, in this case, it is relevant to notice that while drawing panchnama of place of incident, one of the tiles of floor was found to be stained with semen. Therefore, the tile was removed at the instance of an expert. As noticed earlier, the clothes which were put on by the prosecutrix were also seized. The articles seized during the course of investigation were sent to Forensic Science Laboratory for analysis. The report of the analysis produced by the prosecution at Exh.69 establishes that the trousers worn by the prosecutrix were stained with semen having the same group of semen as that of the appellant. This incriminating circumstance was put to the appellant while

recording his statement under Section 313 of the Code, but the appellant has failed to offer any explanation regarding the same. Therefore, this incriminating circumstance will have to be treated as lending corroboration to the testimony of the victim wherein she has claimed that she was raped by the appellant.

13. The plea that the learned Judge has disbelieved the case of the prosecutrix that the appellant had administered threats to her and, therefore, the appellant should be acquitted, has no substance at all. It may be stated that the case of the prosecutrix was that on the day of incident, i.e. on July 13, 2000, threats were administered to her by the appellant that the appellant would fail her in 11th Standard and would also kill her father if the incident was reported by her to anyone. It was also the case of the prosecutrix in her complaint that one year before the incident, which took place on July 13, 2000, the appellant had misbehaved with her, but she had not reported misdemeanour of the appellant as she was threatened at that time also. The learned Judge while framing charge at Exh.15 put it to the appellant that he had committed rape on the victim on July 13, 2000 after administering threats to her and thereby committed offences punishable under Section 376(2) and 354 IPC.

However, as far as threats administered to the victim are concerned, the learned Judge considered the threats, which were spoken of by the appellant one year prior to the day of incident, but did not refer to threats, which were administered by the appellant to the victim on the day of incident. This is quite evident if charge at Exh. 15 is read carefully. Therefore, while answering Issue No.4 framed for determination, the learned Judge has come to the conclusion that as the victim has not referred to about threats given to her one year prior to the day of the incident, offence punishable under Section 506(2) IPC is not made out by the prosecution.

13.1 On re-appreciation of evidence, this Court finds that the threats spoken of and referred to by the prosecutrix in Paragraph 2 of her substantive evidence before the Court is not considered by the learned Judge of the trial Court while determining the question whether offence punishable under Section 506(2) IPC was established or not. As observed earlier though the victim was subjected to gruelling cross-examination, nothing could be brought on record to make a dent in her assertion that she was threatened and thereafter raped. Therefore, the case pleaded by the victim that she was threatened and thereafter raped will have to be accepted.

13.2 In **Brathi alias Sukhdev Singh vs. State of Punjab, A.I.R. 1991 SC 318**, the evidence unmistakenly proved that the appellant was guilty under Section 34 having shared a common intention with the other accused who were acquitted. The Appellate Court found that acquittal of others was bad. The question was whether the Appellate Court was precluded from expressing a view that acquittal of other accused was bad while determining the guilt of the appellant before it more particularly when the acquittal appeal was not filed by the State. While considering the question, the Supreme Court has made following pertinent observations in paragraph 8 of the reported decision:

> *"In the matter of appreciation of the evidence the powers of the appellate court are as wide as that of the trial Court. It has full power to review the whole evidence. It is entitled to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. In considering the evidence as a whole, the appellant Court may come to the conclusion that the evidence against the person acquitted was also good and need not have been discarded. When several persons are alleged to have committed an offence in furtherance of the common intention and all except one are acquitted, it is open to the appellate court to find out on a reappraisal of the evidence that some of the accused persons have been wrongly acquitted although it could not interfere with such acquittal in the absence of an appeal by the State Government. The effect of such a finding is*

not to reverse the order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in invoking against the convicted person his constructive criminality."

Applying the ratio laid down in abovequoted decision to the facts and circumstances of the present case, this Court finds that without considering the evidence in its true perspective, the learned Judge of the trial Court has acquitted the appellant of the offence punishable under Section 506(2) IPC on a specious plea that it was not stated by the victim that one year before the day of incident, the appellant had misbehaved with her, but that misbehaviour was not reported to anyone because of threats administered to her. While considering the question whether offence punishable under Section 506 IPC is made out or not, the assertion made by the victim that after making her lie down on the floor, she was threatened by the appellant and, thereafter, raped, is not considered at all. Therefore, the said finding is liable to be reversed though in absence of acquittal appeal by the State, the appellant cannot be convicted for commission of offence punishable under Section 506(2) IPC. Under the circumstances, the appellant cannot be given benefit on the ground that the case of the prosecution regarding threats to the victim

is disbelieved by the learned Judge of the trial Court.

14. The argument that panchnama of place of occurrence shows that there was no stopper on the door and the door could not have been closed from inside as a result of which claim made by the prosecutrix that she was raped by the appellant after closing the door should be disbelieved is merely stated to be rejected. It is relevant to notice that the specific claim of the victim is that as soon as she had entered Room No.19 of the school, the appellant had closed the door and thereafter committed rape on her. The panchnama of place of incident was drawn on August 2, 2000 and would not indicate and / or show as to what was the position of door or whether there was stopper or not on the date of incident i.e. on July 13, 2000. Therefore, this argument cannot be given undue weight to discredit testimony of the prosecutrix which is otherwise found to be reliable, cogent and inspiring confidence of the Court.

15. The plea that find of semen in large quantity on one of the tiles fitted in Room No.19 as well as trousers of the victim suggest that no rape whatsoever was committed on the victim by the appellant, is merely stated to be rejected. The find of semen having same

group as that of the appellant on the apparel put on by the victim would suggest that the appellant was in close proximity of the victim when the victim was subjected to rape. The victim, in terms, has claimed before the Court that after removing her clothes, the appellant had also removed his clothes and thereafter, subjected her to rape. Therefore, merely because semen in large quantity was found either on one of the tiles fitted in Room No.19 or on the apparel worn by the victim would not suggest that no rape whatsoever was committed on the victim. As discussed above, paragraphs 19, 20 & 21 of the testimony of prosecutrix would not indicate that the victim and the appellant were together in Room No.19 for a pretty long time and had talks, and, therefore, plea of learned counsel of the appellant that the fact that the victim and prosecutrix were in the room for a pretty long time rules out the case of the prosecution that force was used by the appellant while committing rape on the victim cannot be accepted. The prosecutrix has explained in detail as to how, she was taken to Room No.19 by the appellant. According to the prosecutrix, after she had entered Room No.19, the doors of the room were closed from inside though it was objected to by her. The victim has also stated that thereafter, the appellant had embraced her saying that she belongs to a lower caste and

that he was determined to ravish her. According to the victim, after uttering those words, she was physically thrown on the ground and that the appellant had untied string of her trousers and removed her nicker also. The victim has claimed that after she was made naked, the appellant had removed his clothes and committed rape on her. Therefore, it is wrong to contend that no rape was committed on the victim or sexual intercourse had taken place between the appellant and the victim with the consent of the victim. Further, it is satisfactorily established that there was find of semen on one of the tiles fitted on the floor of Room No.19 and trousers put on by the victim. What is mentioned in the panchnama is that semen stains were found, which were ultimately, analysed and ascertained to be the semen having the same group as that of the appellant. Therefore, it is wrong to contend that find of large quantity of semen on one of the tiles and trousers of the victim rules out the rape of the victim.

16. The contention that no external injuries were sustained by the prosecutrix nor injuries were sustained by the appellant during the course of alleged rape by the appellant on the victim and, therefore, the story of rape narrated by the victim should have been disbelieved,

is devoid of merits. It is relevant to notice that the incident in question took place on July 13, 2000 whereas the victim was medically examined by Dr. Radhikaben on July 26, 2000. Under the circumstances, one would not expect the medical evidence to significantly improve the case of the prosecution nor absence of injuries would improve the case of defence. As observed earlier, the testimony of prosecutrix is quite clear, categorical and implicitly reliable. The reliable testimony of the prosecutrix establishes that before committing rape, she was threatened with dire consequences. Therefore, absence of resistance and / or injuries is understandable. Thus, absence of injuries does not make any dent in the prosecution case.

17. The contention that the statement which was given by the prosecutrix before the Police during the course of investigation of the complaint lodged by Principal Mr. Rajnikant Patel completely exonerates the appellant and, therefore, the appellant should have been acquitted is also devoid of merits. It may be mentioned that the case of the prosecution is that the appellant had threatened the prosecutrix to fail her in 11th standard and also to kill her father and, therefore, she had not narrated the incident of rape on her to anyone.

The question before the Court is whether the claim made by the victim that she was so threatened is probable or not. While considering that question, this Court finds that the Principal, who was making inquiries against the appellant, was threatened as a result of which he was required to lodge a complaint which is produced by the prosecution at Exh.30. Therefore, the case of the victim that she was threatened by the appellant as claimed by her in paragraph 2 of her testimony deserves acceptance. As it was revealed during the course of investigation of the complaint lodged by Principal Mr. Rajnikant Patel that the girl who was found with the appellant in Room No.19 was the prosecutrix, her statement was recorded and at that time her parents had suspected that something untoward had happened to her. Therefore, her parents had taken her into confidence as a result of which the victim had narrated the incident of rape on her by the appellant. Viewed in the light of the circumstances established on record of the case, this Court is of the opinion that Exh.83, which is a statement, was given by the victim because at that time she was under the fear of threats administered to her and, therefore, cannot be pressed into service by the defence to urge that commission of offence of rape is not made out by the prosecution.

18. The contention that there was unreasonable delay in lodging the complaint and, therefore, the case of the prosecution should be disbelieved is also merely stated to be rejected. As observed earlier, the prosecutrix was threatened with dire consequences as a result of which, she had not narrated the incident of rape on her to anyone. She had narrated the incident only after she was taken into confidence by her parents, who had suspected that something wrong had happened with their daughter when her statement was recorded pursuant to the complaint lodged by Principal Mr. Rajnikant Patel. Thus, delay in lodging the complaint is satisfactorily explained and cannot be treated as having any vitiating effect on the prosecution case. In **State of Punjab vs. Gurmit Singh & Ors. (supra),** the effect of delay in lodging First Information Report in sexual offences on the prosecution case is, *inter alia,* considered in following terms:

> *"In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The Courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a*

complaint of sexual offence is generally lodged. The prosecution has explained that as soon as Trilok Singh PW6, father of the prosecutrix came to know from his wife, PW7 about the incident he went to the village sarpanch and complained to him. The sarpanch of the village also got in touch with the sarpanch of village Pakhowal, wherein the tubewell Kotha of Ranjit Singh rape was committed, and an effort was made by the panchayats of the two villages to sit together and settle the matter. It was only when the Panchayats failed to provide any relief or render any Justice to the prosecutrix, that she and her family decided to report the matter to the police and before doing that naturally the father and mother of the prosecutrix discussed whether or not to lodge a report with the police in view of the repercussions it might have on the reputation and future prospects of the marriage etc. of their daughter. Trilok Singh PW6 truthfully admitted that he entered into consultation with his wife as to whether to lodge a report or not and the trial Court appears to have misunderstood the reasons and justification for the consultation between Trilok Singh and his wife when it found that the said circumstance had rendered the version of the prosecutrix doubtful. Her statement about the manner in which she was abducted and again left near the school in the early hour of next morning has a ring of truth. It appears that the trial Court searched for contradictions and variations in the statement of the prosecutrix microscopically, so as to disbelieve her version."

On the facts and in the circumstances of the case, this Court is of the opinion that delay in lodging First Information Report is satisfactorily explained. Since it brings in question of morality and chastity of victim, initial hesitation and delay is understandable. In rape cases, reluctance to go to police is because of society's attitude towards the victim. It casts doubt and shame upon the victim rather than comfort and

sympathy. Here, in this case, the prosecutrix was threatened by the appellant with dire consequences. As the delay in lodging the complaint is satisfactorily explained by the prosecutrix herself, no benefit can be given to the appellant. The argument based on delay is, therefore, liable to be rejected and is hereby rejected.

19. Even if the case of the defence that sexual intercourse had taken place between the victim and the appellant with the consent of the victim, is accepted, this Court finds that on the day of incident, the age of the victim was below sixteen years. This is quite evident from the the contents of birth certificate of the victim produced at Exh.96. Therefore, the case would fall under clause sixthly of Section 375 IPC and sexual intercourse by the appellant will have to be regarded as rape on the victim.

20. As observed earlier, the defence of the appellant was that a false case was foisted upon him by the victim at the instance of leaders of Tadvi Community. However, the appellant has failed to probabilise the same. The appellant could not point out as to who were the leaders of Tadvi Community, who had instigated the victim to file a case of rape against the appellant. One

of the defences pleaded by the appellant is that the victim had foisted a false case in order to obtain compensation of Rs.1 Lakh. However, the appellant could not probabilize that defence also. It could not be brought on record by the appellant that the victim was given compensation of Rs.1 Lakh by the Government or that in order to get the amount of compensation, a false case was lodged against him. Yet another defence pleaded by the appellant is that a false case of rape was foisted upon him at the instance of Principal Mr. Rajnikant Patel. It may be stated that the Principal had spotted the appellant with a girl in Room No.19 and at that time, he had found the girl tying the string of her trousers. Under the circumstances, the Principal had sought explanation from the appellant. Merely because the Principal had sought explanation of the appellant, one need not jump to the conclusion that he was on inimical terms with the appellant or he was able to persuade to victim to lodge a false case of rape against the appellant. In fact, it was expected of the Principal to seek explanation of the appellant when the appellant was found all alone in a class room with a girl student in suspicious circumstances. The appellant could not point out to the Court as to which illegalities were committed by the Principal. The appellant has, thus, failed to

probabilize any of the defences pleaded by him.

21. It may be mentioned that the learned Judge has imposed the minimum punishment prescribed by the law. Punishment less than the minimum can be imposed only if there are adequate special reasons to be recorded in writing. The learned counsel of the appellant has failed to point out special reasons which warrant imposition of sentence less than the minimum prescribed. Therefore, the punishment prescribed is also commensurate with the facts of the case and will have to be upheld. Thus, it is held that the punishment imposed by the trial Court is commensurate with the facts of the case and no case is made out by the learned counsel to interfere with the same.

22. In view of above discussion, this Court finds that conviction of the appellant under Sections 376(2) and 354 IPC is well founded. No ground is made out by the learned counsel of the appellant to interfere with the same by this Court. Therefore, the appeal which lacks merit is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. *Muddamal* be disposed of in terms of

directions given by the learned Judge of the trial Court in the impugned judgment.

[J.M.PANCHAL, J.]

[H.B.ANTANI, J.]

Rajendra